

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Joseph C. Sun,)	C/A No. 9:10-1758-RBH-BM
)	
)	
Petitioner,)	
)	
v.)	Order
)	
Philip Foot, Director,)	
)	
Respondent.)	
_____)	

This is an action seeking habeas corpus relief under 28 U.S.C. § 2241. Petitioner is a prisoner in a local detention center. This case is before the undersigned United States District Judge as a result of Petitioner's failure to bring the case into proper form as directed by the assigned United States Magistrate Judge on July 23, 2010. (Entry 6).

MOTION FOR ABEYANCE:

The only response to the initial Order submitted by Petitioner was a "Motion for Abeyance," submitted by Petitioner on July 29, 2010. (Entry 8). In his Motion, Petitioner indicates that he is in the process of pursuing appellate proceedings in South Carolina state courts. He asks this Court to hold his § 2241 Petition and this case in abeyance until such time as the state appeals are completed. It is the common practice of this Court to dismiss habeas corpus petitions without prejudice while prisoners exhaust their state court remedies. Such case are generally not stayed or held in abeyance under such circumstances. Dismissal without prejudice will permit Petitioner to file another petition once his state remedies are exhausted should he so choose. Accordingly, Petitioner's Motion for Abeyance is **DENIED**.

LACK OF PROPER FORM:

A review of the record indicates that the magistrate judge ordered Petitioner to submit items needed to render this case into proper form within twenty days, and specifically informed Petitioner that if he failed to do so, this case would be dismissed *without prejudice*. As state above, Petitioner clearly received the magistrate's Order, but he has not complied with it within the time permitted under the Order. Plaintiff's submission of a Motion for Abeyance and his lack of other response to the Order indicates an intent to not continue prosecuting this case at this time, and subjects this case to dismissal. *See* Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a plaintiff fails to comply with "any order of the court."); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*).

Accordingly, this case is dismissed *without prejudice*. The Clerk of Court shall close the file.¹

IT IS SO ORDERED.

s/ R. Bryan Harwell

R. Bryan Harwell
United States District Judge

August 18, 2010
Florencen, South Carolina

¹ Under General Order, Misc. No. 3:07-5014-JFA, this dismissal *without prejudice* does *not* count as a "strike" for purposes of the "three strikes" provision of 28 U.S.C. § 1915(g). If Petitioner wishes to bring this action in the future, he should obtain new forms for doing so from the Clerk's Office in Columbia (901 Richland Street, Columbia, South Carolina 29201).